

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.2169 OF 2007
IN
L.C.SUIT NO.3853 OF 1994

The International Association of
Tigers Club alias Tiger International
through its President
Shri.Jitendra G.Damani .. Plaintiffs.
Versus
Municipal Corporation of Greater
Mumbai & Ors. .. Defendants.

Mr.Jitendra Damani for plaintiff.
Ms.Geeta Shastri, A.G.P. for defendant No.2.

CORAM : A.M.KHANWILKAR, J.

DATE : 15th October, 2007.

P.C.:

1. It is agreed by the Counsel for parties that the Notice of Motion No.159 of 2007 in L.C.Suit No.3853 of 1994 is already disposed of in terms of order dated 18th June, 2007. Accordingly, removed from the Board.

2. Pursuant to the order dated 18th June, 2007, two affidavits have been filed on behalf of Defendant No.2. The first is of Yashpal Dhanraj Lohi, Junior Clerk of the Suit Branch in the office of the Government Pleader, High Court, Original Side, Bombay and the other is of Mahendra Babulal Dhatrak, Superintendent of the Suit, Land Acquisition References and Sales Tax Department, in the office of the Government Pleader, High Court, Original Side, Bombay.

3. From these affidavits, it is obvious that the duty to scrutinize the daily board is of the junior clerk of the suit branch. The explanation offered by Yashpal Dhanraj Lohi is that on 4th August, 1999 and 20th August, 1999, that duty was discharged by one Umashankar Upadhaya, who is now retired.

4. After going through the affidavit filed by Yashpal Dhanraj Lohi, it is obvious that he admits his responsibility of watching the daily Board. For the other relevant dates, on which the suit was notified and the name of the Government Pleader was also notified on the Board, except on two dates when he was on casual leave that is on 29th November, 2006 and 21st December, 2006

respectively. Even if these two dates are excluded, at least on three other dates, the junior clerk Yashpal Dhanraj Lohi has failed to mark the matter and notify the concerned Government Pleader to appear before the Court.

5. The affidavit of Superintendent indicates that primary responsibility of marking the daily Board and notifying the Advocates to appear before the Court is of junior clerk. However, as the matter remained to be marked by the junior clerk, no arrangement could be made of engaging Advocate to appear before the Court on behalf of Defendant No.2. The explanation offered by the junior clerk on the relevant dates is that due to inadvertence the matter remained to be informed to the respective Assistant Government Pleader and, therefore, the matter went unattended on behalf of the Defendant No.2. It is not possible to accept such explanation. It can be a mistake to overlook the matter on a given date but not on successive dates when the matter was notified and the name of the Government Pleader was also notified. It is a clear case of slackness and casual approach in the office of the Government Pleader, which resulted in adjournments and non filing of the written statement. It is also seen from the affidavits filed alongwith Notice of Motion that the department had conveyed to the Government Pleader's

office in December, 1994, immediately after service of summons. It was expected of the office of the Government Pleader to ensure that the suit is prosecuted effectively on behalf of Defendant No.2. The office of the Dy.Commissioner of Police was made aware about the progress of the matter only in March, 2007, and soon thereafter, steps were taken to assist the Advocate for preparation of written statement.

6. Taking overall view of the matter fault at all lies at the instance of the junior clerk Yashpal Lohi in the office of the Government Pleader, at least attributable for three dates i.e. 1st September, 2003, 8th September, 2003 and 14th March, 2007. The said junior clerk is attached to the office of the Government Pleader. Although, the office of the Government pleader forms part of the establishment of the State Government, however, matter should not go unattended. Having regard to the public interest involved, indulgence is shown to Defendant No.2.

7. By way of indulgence, motion is made absolute in terms of prayer clauses (a) and (b) on condition that Yashpal Lohi, junior clerk in the office of the Government Pleader, High Court, Original Side, Mumbai shall

personally pay costs quantified at Rs.2,500/- to the High Court Legal Services Authority within a period of ten days from today and acknowledgement be produced in the Registry on or before 25th October, 2007, failing which the Superintendent Mr.Mahendra Babulal Dhatrak shall be responsible to ensure that commensurate amount is recovered from the junior clerk Yashpal Lohi and deposited in Court on or before 28th October, 2007. Payment of costs is condition precedent for showing this indulgence.

8. In anticipation that the written statement will be filed on complying the condition imposed in terms of the order passed in the present Notice of Motion No.2169 of 2007, the suit be listed on 26th October, 2007, under the caption "For Framing Issues."

9. Notice of Motion is made absolute in the above terms.

(A.M.KHANWILKAR, J.)